IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.2/1994.
(Salig Ram & Others Vs. State of Rajasthan & Others)

DATE OF JUDGMENT : November 13, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Vikas Balia for the appellant.
Mr. L.R. Upadhyay, Dy. G.A.

BY THE COURT :

This civil regular first appeal has been filed challenging the judgment and decree dated 16.10.1992 passed by the learned District Judge, Bikaner in Civil Suit No.138/1987, whereby the learned trial Judge dismissed the plaintiff's suit.

According to the facts of the plaint, the suit was filed in which it is pleaded that in the locality known as Mohton-ka-Chowk, Bikaner there is a 'kotadi' belonging to plaintiffs No.1 to 3. Plaintiff No.4 is power-of-attorney holder of plaintiffs No.1 to 3 and the suit property 'kotadi' was sold by executing a sale-deed dated 17.06.1986 and the same was presented for registration before the Sub-Registrar, Bikaner. The Sub-Registrar refused to register the same though

requisite fees was deposited. It is further stated that the existence of the building on the land finds mention in the earlier sale-deed dated 21.10.1916 and 10.07.1928; and, so also, a boundary has been shown upon the property which was sold. The document which is placed before the Sub-Registrar by the plaintiffs was not registered on the ground that it was an open land and, according to Section 26 and Section 28 of the Urban Land Ceiling Act, 1986 registeration was prohibited and no notice under Section 26 was given before registration.

As per the plaint, the site was inspected without notice to the plaintiffs and there was no independent witness at the time of site-inspection by the Sub-Registrar himself. The said sale-deed was presented before the Sub-Registrar on 17.06.1986; but, on wrong reasons the Sub-Registrar refused to register the document and the suit property was not an open land and without any basis he refused to register the document, therefore, the suit was filed to get decree to the effect that the Registrar may be directed to register the document and the proceedings under Sections 81 and 82 be quashed.

In the suit, written statement was filed and it was stated in the written-statement that there is no construction upon the land and the land is open land.

Upon the pleadings of the parties, following six issues were framed by the trial Court :

" 1- क्या वादी नं. 1 ता 3 ने एक कोटड़ी मोहता चौक, बीकानेर

को जरिये मुख्तयार आम वादी सं. 4 द्वारा लेंड विद बिल्डिंग का बयनामा दि. 17.6.86 को वादी सं. 5 के हक में प्रतिवादी सं. 4 ने पंजीयन शुल्क लेकर एक्जीक्यूशन कर दिया जिसे वादीगण वाद पत्र में वर्णित तथ्यों पर पंजीबद्ध रजिस्टर में रेकार्ड कराने का अधिकारी हैं ?

2-क्या वादीगण वाद पत्र में वर्णित तथ्यों पर प्रतिवादी सं. 3, 5 के खिलाफ रजिस्ट्रेशन एक्ट की धारा 81, 82 की कार्यवाने कराने का अधिकारी हैं ?

3-क्या वाद पत्र में वर्णित तथ्यों के आधार पर वादी सं. 4,5 के खिलाफ धारा 82 रजिस्ट्रेशन एक्ट के तहत कार्यवाही न्यायालय मुख्य न्यायिक मजिस्ट्रेट, बीकानेर अनवान सब-रजिस्ट्रार बीकानेर बनाम वासुदेव व केदार नाथ नं. मु. 214/87 निरस्त करवाने के अधिकारी हैं ?

4-क्या दावा धारा 80 सी.पी.सी. के नोटिस के अभाव में चलने योग्य नहीं हैं ?

5-क्या दावा वादी मियाद बाहर हैं ?

5-(ए) आया वाद न्यायालय के श्रवणाधिकार का नहीं हैं ?

6- अनुतोष ।"

and, thereafter, the plaintiffs led evidence and produced witnesses Vasudev, P.W.-1, Kedarnath, P.W.-2, Bhanu Pratap, P.W.-3 and Allahbux, P.W.-4 besides adducing documentary evidence. On behalf of the defendants, D.W.-1 Joti Swaroop and D.W.-2 Kishan Gopal were examined.

The learned trial Court while deciding issue No.1 gave finding against the plaintiffs and held that until compliance of Section 26(1) of the Ceiling Act, the plaintiffs are not entitled for registration of the document. The trial Court gave finding upon issue No.2 that the plaintiffs have committed violation of Section 26(1)(f) and, therefore, issue no.2 was also decided against the plaintiffs. Issues No.3 and 6 were also decided in favour of the defendants and against the plaintiffs. Since issue No.4 was not pressed by the defendants therefore it was decided in favour of the plaintiffs. The issue No.5 with regard to limitation of filing the suit was decided in favour of the plaintiffs and issue No.5A, having not been pressed by the defendants being an issue relating to the jurisdiction of the Court, was decided accordingly in favour of the plaintiffs. The adjudication upon issue No.6 was made against the plaintiffs on the basis of finding arrived at upon issue No.1. Thus the suit of the plaintiffs was rejected vide the impugned judgment and decree.

Learned counsel for the appellants urged that the impugned judgment and decree passed by the trial Court is totally erroneous inasmuch as the plaintiffs proved the existence of the building on the land by documentary evidence and the fact of existence of the building finds mention in the earlier sale-deeds pertaining to the suit property dated 21.10.1916 and dated 10.07.1928 and a boundary has been shown and so

also construction of the building is also mentioned. It is contended by learned counsel for the appellants that despite the documentary evidence produced on record, the Sub-Registrar wanted to verify the fact and have an inspection, therefore, he ought to have given the plaintiffs a prior notice and he was also under the obligation to inform them about such inspection. Learned counsel for the appellants contended that it is admitted in the statement of D.W.-1 Jyoti Swaroop, Sub-Registrar that no such notice was given and the documents with regard to the earlier sale-deeds were not disputed. It is argued that in the aforesaid facts and circumstances, the finding with regard to the open land is erroneous and perverse. As per the statement of Jyoti Swaroop, D.W.-1 himself it is a fact that no notice was given before carrying out the inspection and, for the purpose of inspection, no commissioner was appointed nor any inspection report is on record. Rather, he contended, the Sub-Registrar himself went for inspection and, that too, without any witness. When there is no witness examined nor any inspection report is on record it cannot be presumed that the Sub-Registrar rightly refused the registration of the document placed before him for registration.

It is also contended by learned counsel for the appellants that by way of producing oral evidence of P.W.-1 Vasudev, P.W.-2 Kedarnath, P.W.-3 Bhanu Pratap and P.W.-4 Allahbux and adducing documentary evidence

of earlier sale-deeds it was proved by the appellants before the trial Court that the land which is shown through the documents of sale-deed and placed before the Sub-Registrar for registration was not open land and the documents are not disputed. He, therefore, contended that the trial Court committed grave error in discarding the documentary evidence and the oral evidence adduced by the plaintiffs.

It is further contended by learned counsel for the appellants that in the face of the documentary evidence of the earlier sale-deeds onus lay upon the defendants to prove the case otherwise but, despite that, the trial Court committed serious illegality in finding against the plaintiffs on the issue with regard to the open land. He argued that the existence of the sale-deeds was not disputed by the defendants nor any evidence was adduced on behalf of the defence to show that the said sale-deeds dated 21.10.1916 and 10.07.1928 were not in reference to the land in question. It is argued by learned counsel for the appellants that the Sub-Registrar acted illegally and refused to register the document which conduct of him raises serious doubts upon his bonafides. He contended that it is an admitted position of the case that the document was filed on 17.06.1986 for registration and, on that date, around five other documents were filed before the Sub-Registrar and the other documents were registered by the Sub-Registrar on 19.06.1986 but the plaintiffs' document was singled

out for non-exercise of vested jurisdiction. Learned counsel for the appellants submitted that the Sub-Registrar claims to have carried out the inspection on 21.06.1986 based on a complaint received by him on 20.06.1986. The reason given for not registering the document in his oral evidence before the learned trial Court was that there was a complaint with respect to the suit property. On the date the plaintiffs presented the document for registration, five other documents were also presented and the said other documents were registered, however, the document presented by the plaintiffs was singled out and, till 19.06.1986 there was no complaint against the appellants. Learned counsel for the appellants argued that when the other documents were registered, strangely enough, the Sub-Registrar singled out the document of the plaintiffs refusing to register the same. He submitted that in his statement before the Court D.W.-1 Jyoti Swaroop, Sub-Registrar made a vague statement that there was a complaint against the plaintiffs but, in fact, no notice of the complaint was given to the appellants. He contended that neither any opportunity was given to the appellants for presenting their case nor even the appellants were brought on notice about the alleged complaint and straight way the Sub-Registrar refused to register the document.

Learned counsel for the appellants argued that totally frivolous plea was adopted by the State

authority before the Court that since the land was open land, therefore, the provisions of Land Ceiling Act are attracted in the matter. He contended that in absence of any documentary evidence from the side of the defence, the trial Court committed serious illegality in dismissing the suit of the plaintiffs.

Per contra, the learned Dy. G.A. Contended that as per the statement of D.W.-1 Jyoti Swaroop the learned trial Court has rightly held that property in question is open land, therefore, Section 26 of the Act of 1986 is attracted and as such until compliance of the provisions of the section, the document cannot be registered. He argued that a complaint was received on 20.06.1986, upon which, an inspection was made by Sub-Registrar Jyoti Swaroop who was working on the said date and he sent the inquiry report on 21.06.1986 to the District Registration Officer, Bikaner. He argued that the Sub-Registrar rightly refused to register the document which is pertaining to an open land. The learned Government Advocate also invited my attention towards statement of D.W.-2 Kishan Gopal, Addl. Collector (Stamps) who decided the appeal on 15.09.1987 when he was working as Addl. Collector-cum-Addl. District Magistrate, Bikaner. It is contended by the learned Dy. G.A. that D.W.-2 Kishan Gopal proved that he decided the appeal against the order of the Sub-Registrar refusing the registration and it is prayed by the learned Dy. G.A. that the findings given by the trial Court with regard to applicability of

Section 26(1) of the Act of 1986 does not require any interference by this Court because the land in question is an open land.

I have considered the rival submissions and also carefully gone through the entire material on record.

In this case it is not disputed by the defendants that prior to the present sale-deed filed for registration, the said property was sold on 21.10.1916 and, thereafter, on 10.07.1928. The fact about the existence of the earlier sale-deeds in respect of the suit property was not disputed by the defendants before the trial Court. Likewise, as per the statements of P.W.-1 Vasudev, P.W.-2 Kedarnath, P.W.-3 Bhanu Pratap and Allah Bux, who prepared the site plan, it was categorically stated by all the witnesses that there was construction upon the land in question.

I have also perused the statement of D.W.-1 Jyoti Swaroop. In his statement, the Sub-Registrar it is revealed that document was produced before him on 17.06.1986 and as per his statement, on 20.06.1986, he received a complaint. It is stated by him that in the said complaint it was allleged that the land in question is open land and there is no construction, therefore, the said land falls under the Land Ceiling law and for the sale thereof NOC is required to be obtained and, alongwith the sale-deed, no NOC has been produced, therefore, an inspection was made by him. Upon his inspection, the land was found to be open land, therefore, after inquiry, the complaint was sent

back to the District Registration Officer and, as per the order of the District Registration Officer, he refused to register the document vide order dated 03.07.1986.

In Cross-examination, when a specific question was put to D.W.-1 Jyoti Swaroop whether any complaint was received by him, he stated that he did not know. It is also accepted by him that in between 17.06.1986 and 20.06.1986, no complaint was received and, on 20.06.1986, at what point of time, he received the complaint he did not know. When a question was asked to him that at what time he made the inspection he feigned ignorance and contended that the Reader Amrit Lal was with him and, when he was asked whether any witness was there alongwith him he again said he did not know. When a specific question was put to him that in which locality he made the inspection he replied as quoted hereunder :

> " मैं मौका पर गया उसकी कोई मौका रिपोर्ट मैंने बनाई थी या नहीं मेरे को याद नहीं हैं। मैंने मौका पर कोई नक्शा बनाया या नहीं, गवाहान के हस्ताक्षर कराये या नहीं मेरे को आज याद नहीं हैं। मैंने किस जगह का मौका देखा था उसका मौहल्ला मेरे को आज याद नहीं हैं। मैं रेकार्ड देखकर बता सकता हूं। जिस मकान का मैंने मौका देखा उसके आसापासा मैं नहीं बता सकता ना ही नाम बता सकता।
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> मैंने मौका देखा मौका पर 4X 5 फुट का कमरा बना हुआ नहीं था परन्तु वहां पर कोई चार दीवारी बनी हुई थी या नहीं मेरे को याद नहीं। मेरे को तो केवल इतना ही याद हैं कि वहां पर कमरा नहीं बना हुआ था। मेरे को यह भी याद

नहीं कि जो बैनामा प्रस्तुत हुआ था उससे पूर्व के बैनामा की टाईअल व पटटा व नक्शा की जांच करने के लिए पूर्व के पक्षकारों से मांगे थे या नहीं, जांच की थी या नहीं। पंजीबद्ध के लिए प्रस्तुत बैनामे के साथ पूर्व बैनामा व पटटे जिससे यह साबित हो कि यह जायदाद मकान थी जमीन थी क्या था, ये मैंने क्यों नहीं मांगे मुझे पता नहीं। मैंने पूर्व के पटटे व बैनामा मांगना क्यों नहीं उचित समझा मुझे याद नहीं। बैनामा प्रदर्श-2 के साथ प्रस्तुत प्रदर्श-4 नक्शा में लाल रंग से दर्शित कोठड़ी मकान होना लिखा हैं, मैंने इनकी बाबत कोई जांच नहीं की थी, मैंने तो केवल कमरे की बाबत ही जांच की थी। मेरे को यह भी याद नहीं कि इस कोठडी पर कोई पशुपालन का काम होता था या नहीं। विवादित जमीन में कोई कमरा पशुओं को रखने के लिए नहीं बना हुआ था।"

It is very strange that a State authority who is authorised to function as such under the law for registration of a document made such type of statement before Court of law. From his manner of making statement before the Court it can only be deduced that this person was adamant not to register the document. It is further revealed that this person straightway gave report to the Addl. District Collector without preparation of the enquiry report. There is sufficient material on record for taking adverse inference against this witness. However, the trial Court failed to perceive the correct position and committed serious irregularity in reaching the conclusion for adjudication of the issues and fell into material perversity. It is also significant to consider that the present sale-deed is based on two

earlier sale-deeds which were not disputed before the Court below by the defendants in which indisputably there is mention that there is construction upon the land. The finding of the trial Court on issue No.1 is obviously in disregard of the documentary and oral evidence produced by the plaintiffs and, therefore, cannot be sustained. In the face of documentary evidence produced by the plaintiffs before the Court serious onus lay upon the defendants to prove the case otherwise which the defendants have obviously failed to discharge.

Even upon the question of complaint alleged to have been received by the Sub-Registrar there is nothing on record to suggest that the complaint was decided in accordance with law after affording sufficient opportunity of being heard to the plaintiffs. The entire vista fortifies the case of the plaintiffs for their claim for registration of the document and only deducible inference that can be reached in the facts and circumstances, on the basis of the evidence on record, is that the authority illegally declined to register the document.

As a sequel to the foregoing re-appreciation of evidence and discussion, the present appeal deserves to be accepted and the same is hereby allowed. The impugned judgment and decree is set aside. The plaintiffs' suit under Section 77 of the Registration Act, read with Order 7 Rule 1, C.P.C. is decreed for the prayer of the plaintiffs for registration of the

document sale-deed dated 17.06.1986 which the defendants shall record in accordance with law.

Parties to bear their own costs.

(Gopal Krishan Vyas) J.

Ojha, a.